



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT CHUKA**  
**SUCCESSION CAUSE NO. 70 OF 2016**  
**(FORMERLY MERU HIGH COURT SUCC. CAUSE NO. 294 OF 1997)**  
**IN THE MATTER OF THE ESTATE OF THE LATE**  
**MUSA M'MUGA BAIBERE GACIGI- (DECEASED)**  
  
**AND**  
**CORNELIUS IRERI.....ADMINISTRATOR/RESPONDENT**  
  
**VERSUS**  
  
**EUNICE NKUNU.....PROTESTOR/APPLICANT**

**J U D G M E N T**

1. This cause relates to the estate of the late **MUSA M'MUGA BAIBERI GACIGI** (deceased herein) who died on 21<sup>st</sup> June 1996 resident at Mwimbi- Chogoria. The record shows that the deceased left behind the following children/dependants namely:-

- (i) Nathaniel Mburia - (deceased)
- (ii) Isaiah Njagi - (deceased)
- (iii) Elisepher Nkinga- deceased)
- (iv) Lydia Mukwaiti
- (v) Cornelius Ileri
- (vi) Martha Kanini - (deceased) &
- (vii) John Njeru- (deceased)

The properties that comprise the estate in this cause are as follows namely:-

- a) L.R NO. MWIMBI/MURUGI/437measuring approximately 8.48 acres.
- b) L.R. NO. MWIMBI/MURUGI/99 measuring approximately 3.16 acres.

2. This court appointed Cornelius Ileri as the administrator of the estate of the deceased after the initial administrator passed on before finalizing the administration of the estate of the deceased herein. The new administrator vide summons for confirmation of grant dated 15<sup>th</sup> October, 2017 applied for confirmation of grant proposing that the estate be distributed as follows:-

- (i) L.R. No. Mwimbi/Murugi/437 be shared equally between himself and Silvia Kagendo Njeru.

(ii) L.R. Mwimbi/Murugi/99 be given to Gladys Wanja Isaiah.

(iii) Plot at Kaara Market be given to Eunice Nkunu Mburia.

3. The administrator has justified the above mode of distribution on the basis that his late brother Isaiah Njagi left behind a widow Gladys Wanja and

five children. He further testified that his late brother John Njeru left behind a wife named Sylvia Kagendo Njeru while Nathaniel Mburia died and left behind Eunice Nkunu the protestor herein. He further told this court that his proposal reflects the wishes of the deceased herein and conceded that he had left out some of the dependants or children of the deceased because that was the wish of his late father, the deceased herein. He however conceded under cross-examination that he had no written document or a will from the deceased to back up his claims. He insisted that he left out the daughters of the deceased because they are deceased and the remaining daughter- Lydia Mukwaiti in his view is not interested in the estate.

4. The administrator's proposed mode supported by Sylvia Kagendo Njeru, a daughter in law to the deceased by virtue of having been married to the deceased's son the late John Njeru. According to her the late Nathaniel Mburia, husband to Eunice Nkunu had his share of land bought to him by the deceased. She however conceded under cross-examination that she had no details of the parcel bought by the deceased and all she knew was that the late Nathaniel Mburia the protestor and their children resided in that parcel. This sentiment was also supported by Ashford Gitonga who told this court that he was the grandson to the deceased and that the deceased brought it up although he stated that he was not claiming any share in the estate. He however testified that he was opposed to the protestor's mode of distribution because according to him the mode went against the wishes of the deceased.

5. Eunice Nkunu Nathaniel the protestor herein protested to the administrator's proposed mode of distribution through an affidavit of protest sworn on 11<sup>th</sup> January, 2018. She has deposed that plot No. 23 Karaa Market is not the

property of the deceased and faulted the administrator for proposing to give her what did not exist. In her evidence the plot was repossessed by the County Council after they were unable to pay the rates demanded by the Council and that the Council repossessed the plot and allotted it to another person.

6. The protestor has termed the administrator's suggested mode of distribution as discriminatory and unfair as in her view other beneficiaries have been left out citing Lydia Mukwaiti, Martha Kanini and herself as the beneficiaries left out. She has proposed all the children of the deceased should get a share. She has proposed that the estate be distributed as follows;

(i) **L.R. MWIMBI/MURUGI/437**

- a) Eunice Nkunu Nathaniel - 1.94 acres for herself and her children.
- b) Mutegei Kanini - 1.94 acres (share of Martha Kanini deceased)
- c) Cornelius Ileri Musa - 1.94 acres
- d) Sylvia Kagendo Njeru - 1.94 acres
- e) Lydia Mukwaiti - 0.72 acres

(i) **L.R. MWIMBI/MURUGI/99**

- (a) Lydia Mukwaiti - 1.22 acres
- (b) Gladys Wanja Isaiah - 1.94 acres

7. The deceased herein died intestate. He left no written will and by law the administration of his estate including distribution is provided under **Section 2 (1) of Law of Succession Act** as read with **Section 38 of Law of Succession Act** applied. The deceased left two properties comprising the estate namely;

- (a) L.R. No. Mwimbi/Murugi/437 &
- (b) L.R. No. Mwimbi/Murugi/99

8. This court finds that the property known as plot No.23 Karaa Market does not form part of the estate as no evidence has been tendered to establish that it forms part of the estate as defined under **Section 3 of the Law of Succession Act**.

9. The law (**Section 38**) clearly provides that an estate of a deceased person dying intestate should be equally distributed among the surviving children. In this cause there is no dispute that the surviving children of the deceased are Cornelius Ileri Musa and Lydia Mukwaiti. Besides the two there are other dependants within the measuring given **Section 29 (b), Law of Succession Act** who include the following:-

- a) Eunice Nkunu Mburia protestor and daughter in law to the deceased.
- b) Gladys Wanja Isaiah - daughter in law to the deceased.
- c) Silvia Kagendo Njeru - daughter in law to the deceased &
- d) Ashford Gitonga - grandson to the deceased and son to Lydia Mukwaiti.

10. The protestor has named one Mutegi Kanini as a beneficiary but there is no evidence tendered to show that he was being taken care of by the deceased prior to his death. He does not therefore qualify in law to be given a share notwithstanding the fact that he is said to be a child of a married daughter named Martha Kanini (deceased). The said Mutegi Kanini has not even staked claim in this cause because as observed the law does not recognise him as beneficiary.

11. This court finds that the following dependants are entitled to a share of the estate herein namely:-

- a) Cornelius Ileri Musa
- b) Lydia Mukwaiti jointly with Ashford Gitonga who was taken care by the deceased from his childhood until the demise of the deceased.
- c) Eunice Nkunu Nathaniel
- d) Sylvia Kagendo Njeru &
- e) Gladys Wanja Isaiah

12. This court finds the administrator's suggestion that Eunice Nkunu (the protestor) should not get a share because her late husband was assisted by the deceased in purchasing his own share is not backed by evidence tendered in this court. The witnesses called to testify, Sylvia Kagendo (PW2) and Ashford Gitonga (PW3) conceded that they had no facts to back up their claims. In the premises this court finds that the protestor is entitled to equal share of the estate like the other beneficiaries listed above.

13. In view of the foregoing this court hereby confirm the grant issued to the administrator (Cornelius Ileri) on 12<sup>th</sup> May 2017 on the basis of the following distribution;

(i) **LR. Mwimbi/Murugi//437** - measuring approximately 8.48 acres

- a) Cornelius Ileri Musa - 2.328 acres
- b) Eunice Nkunu Nathaniel - 2.328 acres
- c) Sylvia Kagendo Njeru - 2.328 acres
- d) Lydia Mukwaiti
- Ashford Gitonga 1.496 acres jointly

(ii) **LR. Mwimbi/Murugi/99 - 3.16 acres**

- a) Gladys Wanja Isaiah - 2.328 acres
- b) Lydia Mukwaiti

Ashford Gitonga - 0.832 acres jointly

I shall make no order as to costs. I also direct that the Deputy Registrar of this court does execute requisite documents for those reluctant to do so to facilitate transmission of the estate to the respective beneficiaries as per the above confirmation of grant.

**Dated, signed and delivered at Chuka this 15<sup>th</sup> day of October, 2018.**

**R.K. LIMO**

**JUDGE**

Judgment signed, dated and delivered in open court in presence of administratrix and in the absence of protestor.

**R.K. LIMO**

**JUDGE**

**15/10/2018**